

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/7/07

J. SOTO, J. FOGLE, et al.

Plaintiffs,

-against-

PSEC PLUMBING & HEATING CORP.,  
PETER SKYLLAS,

Defendants.

07 Civ. 9594 (GEL)

**ORDER**

GERARD E. LYNCH, District Judge:

The amended complaint in this action asserts claims under the Fair Labor Standards Act on behalf of two plaintiffs, J. Soto and J. Fogle, pursuant to 29 U.S.C. § 216(b).<sup>1</sup> On November 30, 2007, Soto advised the Court that he had settled this case and wished to dismiss the complaint as to him with prejudice.

On December 4, 2007, the Court received a letter from David Abrams, Esq., who purported to represent Fogle, requesting that this Court dismiss the complaint as to Fogle without prejudice pursuant to Fed. R. Civ. P. 41(a). On December 6, 2007, the Court received three additional letters: (1) a letter from counsel for defendants requesting that the Court dismiss Fogle's claims with prejudice because Abrams allegedly filed those claims without Fogle's authorization (Letter from K. Rosenblatt, Esq., to the Court, dated Dec. 5, 2007); (2) a letter from Abrams disputing that allegation and requesting leave to withdraw from this matter if the Court declines to dismiss the case without prejudice (Letter from D. Abrams, Esq., to the Court, dated Dec. 6, 2007); and (3) a letter from counsel for defendants attaching a copy of a letter written by Fogle to Abrams stating that he "never contacted" Abrams for "legal advice" nor sought "legal action" against defendants, and "request[s] that [Abrams] withdraw any false statements or charges that were presented" on his behalf (Letter from J. Fogle to D. Abrams, Esq., dated Dec. 4, 2007, attached to Letter from K. Rosenblatt, Esq., to the Court, dated Dec. 6, 2007).

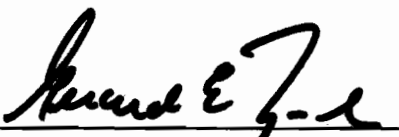
<sup>1</sup> Although the amended complaint also asserts claims "on behalf of other current and former employees" of defendant PSEC Plumbing & Heating Corp. (Amended Compl. ¶ 1), no other employee has "give[n] his consent in writing" to become a party in this action. 29 U.S.C. § 216(b).

Although Fogle's letter indicates that he does not wish to pursue any legal claims against defendants at this time, it is not clear whether Fogle's "request[] that [Abrams] withdraw any . . . charges that were presented" on his behalf constitutes a request for a dismissal with prejudice. If, as Fogle indicates in his letter, the claims were filed without his authorization, the Court has no reason to adjudicate his potential claims, or to preclude future claims by Fogle, who apparently has never received any legal advice, should he ever feel he has reason to pursue such claims. Accordingly, it is hereby ORDERED that the complaint is dismissed with prejudice as to Soto, and is dismissed without prejudice as to Fogle.

Finally, it should be noted that Fogle's letter and the letter from counsel for defendants raise serious allegations against counsel for plaintiffs, essentially contending that he filed an action in the name of a plaintiff who had never authorized such an action or retained him, or even met him. These allegations will be referred to the Court's Grievance Committee for further investigation.

SO ORDERED:

Dated: New York, New York  
December 7, 2007

A handwritten signature in black ink, appearing to read "Gerard E. Lynch", written over a horizontal line.

GERARD E. LYNCH  
United States District Judge